Manitoba
Office of the Commissioner
Law Enforcement Review Agency (LERA)

Annual Report
2003

Manitoba

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105-00282/

ATTORNEY GENERAL
MINISTER OF JUSTICE

The Honourable John Harvard
Lieutenant-Governor of Manitoba

May It Please Your Honour:

It is my pleasure to present the *2003 Annual Report of the Law Enforcement Review Agency.*

This report details the agency's accomplishments and activities for the 12-month period ending December 31, 2003.

I trust this meets with your approval.

Yours truly,

Honourable Gord Mackintosh
Minister of Justice
Attorney General

Manitoba

Justice

Law Enforcement Review Agency

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CANADA

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The Honourable Gord Mackintosh
Minister of Justice
Attorney General

Dear Minister:

Pursuant to Section 45 of ***The Law Enforcement Review Act***, I am pleased to present the Law Enforcement Review Agency's annual report for the period of January 1, 2003 to December 31, 2003.

Yours truly,

George V. Wright
Commissioner

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INTRODUCTION

The Law Enforcement Review Act requires the commissioner to submit an annual report on the performance of his duties and functions to the minister and each municipality in the province with an established police department. The minister shall table the report in the Legislature.

LERA'S Mission Statement

The mission of the Law Enforcement Review Agency (LERA) is to deliver a judicious, timely, impartial, client-oriented service to the public and to the police services and police officers within its jurisdiction.

About LERA

What is LERA?

LERA is an independent, non-police agency, established under *The Law Enforcement Review Act* in 1985, to investigate public complaints about police.

LERA deals only with complaints about municipal police performance arising out of the performance of police duties. It does not investigate criminal matters.

LERA is staffed by a commissioner, registrar/office manager and professional investigators.

To whom does the act apply?

The act applies to any peace officer employed by a Manitoba municipal police department, including police chiefs. It does not apply to members of the RCMP.

Complaints about members of the RCMP should be directed to the Commission for Public Complaints against the RCMP, at **www.cpc-cpp.gc.ca** or by calling, toll-free, 1-800-665-6878. Complaints about RCMP members received by LERA will be forwarded to the Commission for Public Complaints (CPC).

What does LERA investigate?

LERA investigates citizen allegations that municipal police officers have committed any of the following:

- abuse of authority, including:
    - making an arrest without reasonable or probable grounds
    - using unnecessary violence or excessive force
    - using oppressive or abusive conduct or language
    - being discourteous or uncivil
    - seeking improper monetary or personal advantage
    - serving or executing documents in a civil process without authorization
    - differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*
- making a false statement or destroying, concealing or altering any official document or record
- improperly disclosing any information acquired as a member of the police department
- failing to exercise discretion or restraint in the use and care of firearms
- damaging property or failing to report the damage

- failing to assist where there is a clear danger to the safety of a person or property
- violating the privacy of any person within the meaning of *The Privacy Act*
- contravening any part of *The Law Enforcement Review Act* that does not specify a penalty for the violation
- assisting, counselling or causing any person to commit officer misconduct

Who are Complainants and Respondents?

A complainant is any person who feels wronged by the conduct or actions of a municipal police officer in Manitoba and files a complaint. Complainants may file on their own behalf or on behalf of another person. LERA must obtain consent from that person before acting on the complaint.

A respondent is any police officer against whom a complaint has been filed by the public.

How is a complaint filed?

A complaint must be made in writing and signed. Date, time, location and other details of the incident are important and must be included. LERA staff or members of the local police service will help prepare a complaint if asked.

Written complaints may be submitted directly to LERA, a police chief or any member of a municipal police department. Police will forward complaints to LERA.

Are there time limits?

The act requires a complaint to be submitted within 30 days of the incident. The commissioner may extend that limit if there are valid reasons for being unable to submit the complaint on time.

The commissioner may also extend the 30-day filing limit to avoid conflict with court proceedings or ongoing criminal investigations involving a complaint.

How is a complaint investigated?

LERA has professional investigators who interview witnesses, take statements and review reports such as official police records and medical reports. LERA investigators conduct all inquiries they believe are necessary to uncover relevant evidence.

LERA may be contacted at any time to inquire about the status of a complaint. The commissioner remains open to discussion with all parties before making a final decision.

Preliminary screening of complaint

After the investigation, the commissioner will screen the complaint to decide if any further action should be taken. The act requires the commissioner to do this. A decision will be made by the commissioner to take no further action if any one of the following situations arise:

- the alleged conduct does not fall within the scope of misconduct covered by the *Act*.
- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

If the commissioner decides to close the matter and take no further action, the complainant will be notified in writing. The complainant will then have 30 days from the date of the decision to ask the commissioner to refer the matter to a provincial judge for review. Reviews are arranged by LERA at no cost to the complainant.

Does a complainant need a lawyer?

The complainant does not require a lawyer when dealing with LERA. The complainant and the police are both entitled to legal representation during the process if they choose. However, they must arrange for such services themselves.

If a complainant applies for legal aid and is declined, he/she may, in exceptional circumstances, make a request to the minister of justice to appoint a lawyer to represent him/her at a hearing.

Police officers in these cases are generally represented by a lawyer under their employment contract.

How are complaints resolved?

The act provides several ways to resolve complaints.

Informal Resolution:

The commissioner must try to resolve the complaint through informal mediation. Both the complainant and the police officer must agree to this process before it can take place. If the complaint is resolved informally, to the satisfaction of both the complainant and the respondent(s), no further action is taken and no record of the incident is made on the officer's service record.

Admission of Disciplinary Default:

A respondent can admit to the alleged officer misconduct. The commissioner then reviews the officer's service record and consults with the police chief before imposing a penalty.

Referral to Judge for Hearing:

If a complaint cannot be resolved informally, and there is no admission of officer misconduct, the commissioner must refer the complaint to a provincial judge for a public hearing.

Penalties that may be imposed by the provincial judge on the respondent(s) under *The Law Enforcement Review Act* are:

- dismissal
- permission to resign, or summary dismissal if the resignation is not received within seven days
- reduction in rank
- suspension without pay for up to 30 days
- loss of pay for up to 10 days
- loss of leave or days off for up to 10 days
- a written reprimand
- a verbal reprimand
- an admonition

LERA as an Agency

The Law Enforcement Review Agency (LERA) is an agency of Manitoba Justice, Criminal Justice Division, under *The Law Enforcement Review Act*.

The Lieutenant-Governor in Council charges the minister of justice, as a member of the executive council, with the administration of *The Law Enforcement Review Act*.

The Law Enforcement Review Act authorizes the Lieutenant-Governor in Council to appoint a commissioner.

The commissioner carries out investigations in compliance with *The Law Enforcement Review Act* and has powers of a commissioner under Part V of *The Manitoba Evidence Act*.

LERA is staffed by a commissioner, a registrar/office manager and two investigators.

LERA's address is:

420-155 Carlton Street
Winnipeg, Manitoba, R3C 3H8
Telephone: 204-945-8667 in Winnipeg; or toll-free in Manitoba 1-800-282-8069
Facsimile: 204-948-1014

E-mail: lera@gov.mb.ca

Website: www.gov.mb.ca/justice/lera

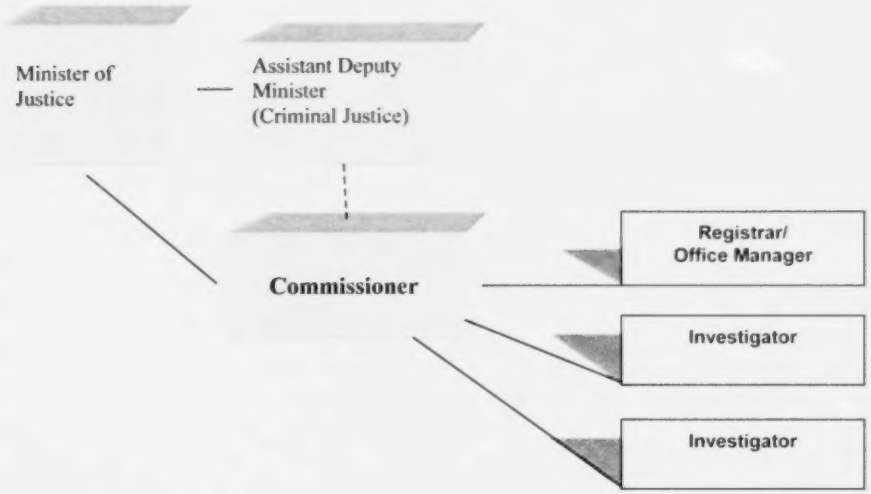
LERA'S Organizational Structure

The commissioner is required to submit an annual report on the performance of his duties and functions to the minister and to each municipality in the province that has established a police department.

From an administrative perspective, the commissioner reports directly to Criminal Justice Division's assistant deputy minister.

LERA's budget for the financial year beginning April 1, 2002 and ending March 31, 2003 is:

Full Time Employees	4
Total Salaries	$228.4
Total Other Expenditures	$ 61.1
Total	$289.5



Activities

During the year, the commissioner and staff:

- met with the Honourable Gord Mackintosh, Minister of Justice
- participated in meetings and discussions with police executives, police service members and municipal officials
- participated in the Manitoba Bar Association's Law Day open house at the Manitoba Law Courts Complex
- met with the assistant deputy minister of Criminal Justice Division on a regular basis
- met with executive members of the Winnipeg Police Association
- made presentations to Winnipeg Police Service recruit classes
- attended graduation ceremonies for Winnipeg Police Service recruit classes
- attended Brandon Police Service appreciation dinner
- attended the National Association for the Civilian Oversight of Law Enforcement (NACOLE) conference in Los Angeles
- attended the Canadian Association for the Civilian Oversight of Law Enforcement Conference (CACOLE) in Banff
- made a presentation to Professional Standards Unit, Winnipeg Police Service
- made a presentation to staff at the Manitoba Youth Centre
- met with staff member(s) of Manitoba Ombudsman
- met with Dakota Ojibway Police Commission, Brandon, Manitoba
- made presentation to University of Winnipeg Sociology of Police and Law Enforcement Class
- made presentation to Brandon Police Service experienced officer hire class
- attended Aboriginal and Diversity Law Enforcement Conference, Winnipeg
- made presentation to Brandon Police Service recruit training class
- made presentation to Professional and Business Club of Winnipeg ((Probus)
- made presentation to Assiniboine Rotary Club
- staff member attended Winnipeg Police Service Suicide Intervention Training Course
- enhanced LERA'S website to greatly improve navigational abilities
- attended Sioux Valley Dakota Nation and met with a complainant and Dakota Ojibway Police Service (DOPS) Commission member
- met with Manitoba Justice department officials during drafting of *The Cross Border Policing Act*
- continue working with director and staff of Manitoba Justice Information Systems in the design and development of a new case administration system using MS.NET Technology. Acronym – CIPCA (Conduct Investigations of Police and Case Administration)
- attended The Manitoba Attorney General Safer Community Awards Dinner

Acknowledgements

- Members of the public who make their complaints and concerns known to LERA
- Complainants and respondents who are able to resolve their differences by informal resolution
- Chiefs of police of Manitoba's municipal police services
- Police associations and members of Manitoba's municipal police services
- Legal counsel acting for complainants and respondents
- Manitoba Justice officials for their assistance and expertise
- LERA's staff, whose competence and commitment are vital to LERA's success as a civilian monitoring agency
- The many other stakeholders involved in the LERA process

Case Summaries

Commissioner's Decision to Take No Further Action

When LERA receives a complaint, the commissioner assigns an on-staff investigator to conduct an investigation into the complaint. When the investigation is completed it is the commissioner's job to review the results of the investigation to determine whether to take no further action in cases where:

- *The complaint is frivolous or vexatious;*
- *The complaint is outside the scope of the disciplinary defaults listed in section 29 of the Act*
- *There is insufficient evidence to justify referring the matter to a public hearing; or the complaint has been abandoned.*

In carrying out this duty the commissioner performs an important "gate-keeping" function that ensures that complaints with no chance of success do not make their way to a public hearing. This function is designed to ensure that the LERA process runs more smoothly and efficiently and to preserve the legitimacy of the LERA process in the minds of members of the public.

Following are samples of cases in which the commissioner decided no further action was required:

- A woman called police to complain that her neighbour's friends had cut through her property and were making excessive noise in the neighbour's back yard. Police found no one making any excessive noise when they arrived. The woman called the police four more times over the next few hours complaining of excessive noise and an open pit fire in the neighbour's back yard. Each time the police came, they found no one making noise and the fire was controlled in the pit. One officer stayed behind in the darkened alley for several minutes to see if anyone made noise after the police left. No noise was heard. The complainant also called the fire department about the fire pit. The fire captain said the fire in the pit was not a hazard.

  The next day, the woman called police to report that her car had been vandalized. Within the hour, she called again to report her gas cap missing. Within the next hour, she called twice more. In 16 hours, the complainant had called police nine times complaining about her neighbours.

  The woman filed a complaint with LERA criticizing the investigation done by the senior police officer and accusing him of being discourteous to her. She also accused him of discriminating against her and failing to provide assistance. In previous dealings with the neighbours, the woman was charged and placed under a court order to have no communication with them. She said she was unfairly charged, while no charges were laid against anyone that she complained about to police.

  The commissioner said there was insufficient evidence for a hearing and declined to take any further action on the file.

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- A man and his partner stole a vehicle and committed two armed robberies. During the second robbery, an alarm went off and police responded. One police vehicle saw the stolen vehicle and chased it at high speed. The stolen vehicle missed a turn and ran into a snow bank. The complainant was arrested at gunpoint; his partner ran and was caught later by another police unit. During the man's arrest, he was ordered to the ground. When the officers tried to handcuff him, there was a struggle and the man's face was injured. The man was then taken to the police station. He was interviewed by two different officers about a number of armed robberies besides the two he had been arrested for. The man claimed he was not allowed to contact his lawyer.

  He also claimed he was punched, kicked in the groin and that an officer stood on his head, after he had been dumped out of a chair. When he was lying on the floor, he claimed that an officer did

a knee drop on his hip causing him to lose consciousness momentarily. The man agreed to provide a video statement but said he had been coerced into doing so. He said the officers threatened to charge his wife with being an accomplice in one of the robberies if he didn't do the video. He also was told what to say on it.

The police said the man had been given an opportunity to call a lawyer but didn't use it. The officers denied the allegations and the medical report did not show the injuries he claimed were caused by police. When the video was viewed, the man did not show any signs of physical injury consistent with his claims. He did have some marks on his face from the original arrest. The video showed he had clearly not been coached by police because he strongly denied two allegations of robbery but did admit to several others.

The commissioner determined there was insufficient evidence for a hearing and declined to take any further action on the file.

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- Police were called to a domestic dispute. They found a highly intoxicated, aggressive male at the scene. It was found there had not been a domestic assault, but the officers arrested the man because he appeared so intoxicated. The officers had difficulty getting the man into the police car to take him to the Intoxicated Persons Detention Centre, so a third officer had to assist. At the centre, the man feigned unconsciousness and had to be carried into the building. Inside the centre, one officer bent over to check on the man. The man kicked the officer in the face causing her severe injury. She had to be taken to the hospital for treatment. Other officers were called to assist and the man was taken to the police station. At the police station, the man had to be carried in because he would not walk. Once he was in the interview room, he calmed down so the handcuffs were removed. However, when the officers began to search him, there was a violent struggle before he was subdued again.

  The report showed the complainant was inconsistent in what he remembered about the incident. He claimed to have detailed knowledge of what was done to him but had little or no recall of what he did to others. He also did not tell the truth about how much he had drunk and his version of events were contradicted by civilian witnesses at the apartment and at the Intoxicated Persons Detention Centre.

  The commissioner said the man's complaint was frivolous and declined to take further action on the file.

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- A man was driving in a car with his wife and their teenage daughter. Two police officers happened to be following them and saw the man strike his wife several times with a closed fist. Each time he struck her, the car crisscrossed the road, creating a hazard. The officers stopped the car and arrested the man for domestic assault. While one officer dealt with the man, the other officer dealt with the woman and daughter. They agreed the man and woman had been arguing but both the wife and daughter denied the wife had been assaulted despite her obvious injuries and the officers having seen the assault.

  The woman filed a complaint saying the officers had not offered her and her daughter a ride home. She claimed the officers told her to catch a bus, or go to a nearby restaurant to call a friend or a taxi. The woman said she and her daughter had to walk home. The car was towed because neither the wife or daughter had a driver's licence.

  The police report said the woman was angry her husband had been arrested and that she and her daughter were verbally abusive to the officers. The report also said that neither of them would give police any further information and strongly denied there was an assault. The officers said

they tried to talk to the woman and her daughter about options to get home but were ignored and when one of the officers gave them pamphlets on domestic violence, they threw them away.

The officers confirmed the police report and also said they did offer to have another police car take the woman home or call them a cab. They also suggested they could go to the nearby restaurant to call a friend. The officers could not take the women home because they had to wait for the tow truck. Another police car had taken the man to the police station by that time.

The commissioner said there was insufficient evidence for a hearing and declined to take any further action on the file.

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- Two men filed complaints about being harassed by police. Both complaints were filed through the complainants' lawyer. In both cases, the incidents the men described had happened beyond time frames allowed under *The Law Enforcement Review Act*. However, the act allows exceptions in certain conditions. Letters were sent to the two men and their lawyer asking them to explain the delay in filing their complaints. There were no replies.

  The commissioner said that because neither of the two men or their lawyer responded to his letters, they had abandoned their complaints. He declined to take further action on the files.

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Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action

When the commissioner declines to take further action on a complaint, the complainant may apply to the commissioner to have the decision reviewed by a provincial judge. Section 13(2) of The Law Enforcement Review Act *stipulates that the commissioner must receive this application within 30 days after the date the decision was sent to the complainant.*

Following are samples of these applications.

- A woman answered a knock at the door of her home. She saw members of two different police departments there, one of whom handed her a search warrant. She asked for time to read the warrant and found it said the search was authorized for the residence of a man who lived in a separate unit at the same address. She told the officers that there were two units in the building and the man named on the warrant lived in the main floor apartment. She said the officers could not search her apartment because it was not listed on the search warrant and the man did not live in her apartment. An officer told her they were going to search her apartment and that if she did not get out of the way, she would be arrested for obstruction. The officers then searched her apartment.

  The senior police officer who had obtained the search warrant said it was for search and seizure of firearms and ammunition. It was issued because the man who lived at that residence had allegedly threatened a witness. The officer was not aware at the time he got the search warrant that the residence contained two separate apartments. The officer was also concerned about the safety and whereabouts of the witness who had been threatened, because the man and his brother had allegedly removed the witness from her apartment. The officer believed the search warrant was valid for the whole residence. The brother of the man named in the warrant was found in the main floor apartment along with weapons and ammunition. The man named on the warrant was located in the woman's apartment.

  The commissioner declined to take further action, because there was not enough evidence for a public hearing. The woman asked to have a provincial judge review the commissioner's decision.

  Decision: The provincial judge disagreed with the commissioner's decision and the matter was referred for a hearing.

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- A man was stopped for speeding after he passed an unmarked police car on a curve. One of the officers told him in a loud voice he was getting a ticket for speeding. The man claimed the police car was travelling below the speed limit so he passed it. He admitted that he did exceed the speed limit to pass the police car. He also claimed the reason he was given the ticket was because he had been in conflict with a man at work and the man's brother is a police officer on the same police force.

  The officers said they were driving on the street when the man passed them at high speed on a curve. They sped up and clocked the man's vehicle at 80 kilometres per hour in a 50-kilometre zone and then pulled him over. The officers said the only reason for stopping the man was because he had been speeding. Neither officer had had any prior dealings with this man.

  The man later pleaded guilty in traffic court for speeding and was fined.

The commissioner declined to take further action, because there was not enough evidence for a public hearing.

The man asked to have a provincial judge review the commissioner's decision.

Decision: The provincial judge stated there was no evidence for a public hearing and agreed with the commissioner's decision not to take further action. The judge also said the complaint appeared to be totally frivolous and vexatious.

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- A man called police saying he had been assaulted and injured by a bouncer at a local bar. When police arrived, the man told the officers what had happened and that he needed to go to the hospital because he was bleeding. The officers told the man they would take him to the hospital. He waited in the police car while the officers went into the bar to investigate the matter. When they came back out, he was told there were conflicting stories about what happened to him and the officers would not be laying any charges at that time. He was told to think about the situation for a few days and get back to them if he wanted to pursue the matter. The officers gave the man a card with the incident number and their badge numbers when they dropped him off at the hospital. The man felt that the officers did not treat his complaint seriously and that they were discriminating against him because of his previous complaints against the police.

  The officers confirmed they had done a preliminary investigation and decided that no charges would be laid at that time because of conflicting stories about what happened. They also said it was very busy that night and they felt they should take the man for treatment and let him think about the situation. The complainant did go to the police station later and another officer followed up on the investigation and charges were laid against the bouncer.

  The commissioner declined to take further action, because there was not enough evidence for a public hearing. The man asked to have a provincial judge review the commission's decision.

  Decision: The provincial judge said the officers dealt with the complaint properly. The man took the officers' advice and when he followed up with his complaint, charges were laid against the bouncer. The judge did not see any indication that the officers had any preconceived opinion with regard to the man's complaint. He also stated that he was satisfied that the commissioner did not err in declining to take further action on this complaint.

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- A woman with a hearing disability went to her pharmacy to have a prescription renewed after having arranged with her doctor to telephone the pharmacy. The woman can speak but needs responses written down for her to read. At the pharmacy, the pharmacist gave her a note saying she had to get a written prescription from her doctor. She went to her doctor's office without an appointment to get the prescription. The office was very busy and she told the receptionist she should not have to wait since she had phoned two days earlier to arrange to renew her prescription. When speaking with the receptionist and the doctor, both turned their heads away so she could not make out what was being said. She became very frustrated before the doctor wrote her a note telling her to go and get her prescription filled. She returned to the pharmacy and while she was waiting, two police officers came in, spoke to the pharmacist and looked at her. When the pharmacist gave her the prescription, he wrote her a note saying she should not stay around. She asked the pharmacist if the police were there for her and he shrugged his shoulders.

  She was clearly upset that her doctor had apparently called the police. She returned to the doctor's office and asked the receptionist if she had called police. The receptionist pointed towards the doctor's office. The woman saw the same two officers and asked if they wanted her. The officers started speaking to her and she told them they would have to write down what they

were saying. One officer took her elbow roughly and started pushing her toward the door. When she told them again that they needed to write out what they were saying to her, they pushed her more roughly out the door and continued speaking to her. She took out a pen and paper and offered it to the officers, asking them to write. The officers looked bemused, laughed and walked away.

The police report said the woman had been belligerent with the officers. The doctor's receptionist said the woman would not calm down or listen to anything and that she felt the officers acted properly.

The commissioner declined to take further action, because he saw the woman's complaint as frivolous and vexatious.

The woman strongly objected to the commissioner's decision and asked that it be reviewed by a provincial judge.

Decision: The provincial judge said that, as a person with a hearing disability, the woman's rights were clearly protected under Section 9 of The Human Rights Code. *The judge disagreed with the commissioner's decision and returned the case to the commissioner to have it resolved informally. The judge also said that, if the informal resolution failed, the matter should be referred to a hearing.*

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- A man filed a complaint on behalf of his mentally challenged brother who had been arrested by police for indecent exposure and assaulting a police office. The man said the officers used excessive force that caused injuries to his brother, which required medical attention.

  The officers said a witness had pointed out the man who had exposed himself. When the officers approached him, he tried to run away. He was tackled to the ground where he fought with the officers. He bit one officer on the arm and the finger and would not let go. The officer struck the man on the face with his closed fist causing injury. When the officers got the man handcuffed and under control, they realized by the way he spoke that he was mentally challenged. The man was taken directly to the hospital for stitches and then to the police station. The officers had never dealt with the man prior to this incident and were not aware of his mental disability until after his arrest.

  The witness who had pointed out the complainant saw the police approach him and saw him fighting with them.

  The commissioner declined to take further action because there was not enough evidence for a public hearing.

  The man who filed the original complaint asked to have a provincial judge review the commissioner's decision.

  Decision: The provincial judge said there was no evidence for a public hearing and agreed with the commissioner's decision not to take further action.

******

- A man was stopped by plain clothes police officers in an unmarked police car. He was told that he had been speeding and would be served with a speeding ticket the next day because the officers did not have a ticket book in their car. When the officers came to the man's apartment the next day, a woman answered the door. When they asked for the man, she told them to wait a minute and shut the door. While the officers were waiting, they heard a male and female shouting inside.

One officer went outside to look in the window but the shades were drawn. He knocked on the window and the same woman opened the shade and asked what he wanted. He went back into the building.

The apartment door suddenly opened and the man came out shouting at the second officer. The man lunged forward, punched the officer in the face and pushed him against the wall. He tried to get into the apartment and close the door on the officers and there was a struggle. The man was arrested and taken to the police station. At the police station, the man claimed that one of the officers assaulted him while he was alone with him in an interview room. He claimed he was injured at that time.

Both officers said that any injury to the man happened during the initial struggle and arrest at the man's residence. Both officers denied ever being alone with the man in the interview room at the police station.

At his criminal trial, the man pleaded guilty to assaulting a police officer.

The commissioner declined to take further action because there was not enough evidence for a public hearing.

The man asked to have a provincial judge review the commissioner's decision.

Decision: The provincial judge said the man's injuries could have happened in the interview room and not at the man's residence as the officers had claimed and referred the case for a hearing.

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Case Summaries

Informal Resolution of Complaints

> *Under Section 15, the LERA commissioner provides the complainant and respondent with an opportunity to informally resolve the complaint. The process is often, but not always, successful. To be successful, the process must satisfy each of the parties involved. There is no single model for informal resolutions; they can range from a simple explanation of a police officer's action or a discussion to clear up a misunderstanding, to an apology or reimbursement for damages caused in the incident.*

Following are examples of complaints resolved informally in 2003:

Informal Resolutions

- A woman complained police had searched her home while she was away at work. Her boyfriend was there babysitting her son when the police arrived. The police said they showed him a warrant to search for drugs but did not leave a copy of it. During the search, some of the woman's property was damaged and her son was frightened. The boyfriend denied being shown the search warrant. No illegal drugs were found during the raid. The woman also complained the officers viewed a highly personal video of her and her boyfriend.

  Although the woman was prepared to take this matter to a hearing, she also advised that she would be willing to settle the matter informally.

The complaint was resolved informally.

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- A woman was driving to work on a snowy day. She crossed a bridge, passing several vehicles on the right and then turned right to go to her workplace. She said she had set her cruise control at 70 kilometres per hour. A police officer stopped her and accused her of driving on the pedestrian lane on the bridge and driving over 100 kilometres per hour. Because the officer did not have any tickets in his car, arrangements were made for her to report to the police station the next morning. She went to the station and was placed into a locked interview room for over 20 minutes. When the officer came to speak with her, he gave her a ticket for careless driving.

  In traffic court, the woman was acquitted of the careless driving charge. The judge said that if she had been charged with speeding or driving on the shoulder of the road – and not careless driving – she would have been convicted.

  As it turned out, the officer was mistaken about the pedestrian lane on the bridge. It was not on the side where she was driving. It was next to the lane going the opposite way. The woman felt that the officer's conduct was abusive and his actions were meant to intimidate.

The complaint was resolved with a meeting between the woman and the officer.

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- A man was walking home from a corner store when he saw the police. He turned into the alley and the police followed him. When he turned into his yard, the police grabbed him and pushed him, cutting his face and breaking his glasses.

The police report stated a man had been harassing a woman at a payphone. When police arrived they saw a man run into an alley and by the time they caught up to him, he had turned into a yard. When the officer went to grab the man, he turned around with his hands raised. The officer pulled him to the ground and the man struck his face on a wooden barrel. After checking the man's identification, the police realized he was not the person they were looking for.

The complaint was resolved to the complainant's satisfaction.

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- A teenage girl was walking to the bus stop when several police cars pulled up. She was told that someone had seen her committing a break and enter offence. She was searched and put in a police car. The police had a youth in custody nearby who told the officers she was his girlfriend and had been involved in the offence. The girl denied knowing the youth and denied being involved.

  Further investigation by police showed the youth had lied about the girl. She had just happened to walk by the scene and did not know the youths at all.

The matter was resolved with a meeting between the girl, her father and the officers involved in her detention.

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- A man was driving when he came upon a police car stopped in one lane, next to a vehicle in the other lane. The police car did not have its flashing lights on and the officer appeared to be talking to the other driver, so the man then honked his horn. The officer opened his car door and yelled at the man, using impolite language. The man got out of his car and walked up to the police car. The police officer got out of his car and told him to take another route because he was investigating a traffic situation. When the officer was asked for his badge number, he yelled it at the complainant.

  During the LERA investigation, it became clear that the officer was in a high-risk situation when he stopped the driver beside him.

When the situation was explained to the man, he accepted the fact that the officer was under considerable stress and considered the matter resolved informally.

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Case Summaries

Public Hearings before a Provincial Judge

Public hearings under The Law Enforcement Review Act *(*TLERA*) are held before provincial judges. They do not sit in their usual capacity as a member of the provincial court. A public hearing is only held after a matter has been referred by the commissioner under Section 17.*

Where a public hearing has been referred by the commissioner, Section 27(2) of TLERA *states: "The provincial judge hearing the matter shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default."*

The "clear and convincing evidence" standard was added to the act in 1992. It is not worded the same as the more traditional standards that are used in other contexts. In criminal cases the standard is "beyond a reasonable doubt" -- which was used in the act until 1992. In civil cases, the standard is "balance of probabilities."

Provincial judges have ruled in past cases that since LERA's hearings are, in fact, civil proceedings, the standard of proof was "balance of probabilities" and not "clear and convincing evidence."

The provincial judges also ruled that "clear and convincing evidence" simply means the quality of evidence necessary to meet the standard of proof on a "balance of probabilities."

Following are samples of public hearings on the merits of complaints – 2003:

- A woman was in her house entertaining relatives when police arrived looking for her nephew. Her nephew was wanted for domestic assault and had escaped custody when officers tried to arrest him the previous week. The police pushed their way into the house and searched for the nephew.

  Officer Misconduct – Two police officers

  Section 29(a)(iii), *The Law Enforcement Review Act* — abuse of authority by searching a residence without warrant and using oppressive or abusive conduct or language.

  Disposition: The complainant decided to withdraw her complaint before the hearing date could be set.

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- A man was sleeping at his girlfriend's home when he was awakened by police who had come in through an unlocked door. His girlfriend was not home at the time. The police advised him that they were there to conduct a drug search, showed him the warrant but did not leave a copy of it with him. During the search, one officer looked at a video in a camcorder, which contained highly personal images of the man and his girlfriend. He showed these images to two other officers and made disparaging remarks to the man about the images.

  Officer Misconduct: One police officer

  Section 29(a)(iii) of *The Law Enforcement Review Act* – using oppressive or abusive conduct or language.

  Disposition: A hearing date was set but the complaint was resolved informally and the judge ordered the file closed.

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A man was at his home with his three-year-old son when police came to his door. The officers told him they had a search warrant to look for stolen property. As soon as the officers entered the residence, the man was searched and a small quantity of drugs was found in his pocket. The search and handcuffing of the man was done in the presence of the three-year-old son.

Officer Misconduct: One police officer

Section 29(a)(iii) and 29(a)(iv) of *The Law Enforcement Review Act* – abuse of authority by using oppressive or abusive conduct or language and by being discourteous or uncivil towards the man.

Disposition: Prior to the hearing, the complainant man was told the police officer had retired from the police force. He decided not to proceed with his complaint and the judge closed the file.

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Statistical Analysis

- LERA's jurisdiction extends to 14 police services with a police officer complement of 1,322. Total population served is 720,229.
- Winnipeg Police Service accounts for 90 per cent of complaints made to LERA. Dakota Objibway Police Service accounts for three per cent, Brandon Police Service for six per cent and other forces account for the remainder.
- There were 421 files opened in 2003, the highest number of complaints received in a year. The five-year average is 379.
- The 250 formal complaints filed are the highest ever recorded. As with the previous two years, this figure remains substantially higher than the number of files for which formal complaints were never received or were closed after a preliminary investigation (171 complaints). This reflects the efforts of LERA to provide better service by following up with complainants to ensure that they are heard. By contrast in 1999 and 2000, the number of formal complaints was similar to the number of files for which a formal complaint was never received or was closed after a preliminary investigation.
- The number of investigations carried over from the year 2002 combined with new complaints for the year 2003, continues to be high and taxes LERA staff. In 2002 there were 430 total investigations, while there were 447 in 2003, an increase of 17 files.
- There was a decrease in the number of investigations completed over the previous year, from 235 to 205.
- A total of 41 per cent of files opened in 2003 were closed as a result of a complaint not being received, or, after a preliminary investigation. This compares to 38 percent in 2002.
- The average length of time to complete investigations decreased to nine months from 12 months in 2003. This compares to a five-year average of 11 months and is a very positive improvement.
- For 2003 there is an increase in the number of allegations of disciplinary defaults recorded in four of the five main categories; abuse of authority, using unnecessary or excessive force, using oppressive or abusive conduct or language and being discourteous or uncivil. However, there was a decrease in allegations of disciplinary defaults about arrest without reasonable or probable grounds. The increase in allegations of disciplinary defaults is in part due to a closer examination of complaints by LERA investigators. When numerous allegations are made in a complaint, a concerted effort is being made to identify and record the default at the outset.
- Complaints under the main category of abuse of authority include, but are not limited to, allegations of breaches of the *Canadian Charter of Rights and Freedoms*, unlawful arrests, unlawful searches and breaches of *The Intoxicated Persons Detention Act*.
- The number of complaints alleging the misuse of pepper spray remains consistent.
- Incidents alleging misuse of handcuffs increased to 26 and were made in 10 per cent of complaints investigated.

- Incidents alleging injuries from the use of force increased to 106 and were made in 42 per cent of complaints investigated.

- The rate of informal resolution of complaints remained at about the same as in 2002. As a public service agency, LERA actively supports and, whenever possible, engages in alternative dispute resolution aimed at restoring social harmony between affected parties. This method of complaint resolution remains a priority.

- Complainants' requests for reviews by a provincial judge of the commissioner's decision decreased from 22 to 13 in 2003.

- LERA is not mandated to conduct criminal investigations. Where a matter before the commissioner or a provincial judge discloses evidence that a member may have committed a criminal offence, the commissioner or provincial judge shall report the possible criminal offence to the attorney general.

- In recent years, if there is an inference of criminal misconduct, LERA investigators will inform the complainant that a criminal complaint may also be made to the police force where the incident occurred. In 2003, 11 criminal complaints were lodge with police where a LERA complaint was also filed. However, there were no incidents that arose where the commissioner was required to report criminal offences to the attorney general. See Tables 11 and 12.

2003 Statistical Report – Data Tables

Table 1: Complaints by Police Service	Police Officers **	Population ***	2003 (n=250)	2002 (n=227)	2001 (n=225)	2000 (n=191)	1999 (n=218)
Altona	6	3,434	1 (0.5%)	0	0	1 (0.5%)	0
Brandon	68	39,716	16 (6%)	14 (6%)	16 (7%)	22 (12%)	24 (11%)
Dakota Ojibway	26	5,923	7 (3%)	17 (7%)	0	1 (0.5%)	0
RM East St. Paul	10	7,677	0	0	2 (1%)	0	0
Morden	7	6,142	0	0	0	0	1 (0.45%)
Rivers	3	1,119	0	0	1 (0.5%)	0	0
Ste. Anne	3	1,513	0	0	0	1 (0.5%)	3 (1%)
Winkler	11	7,943	0	0	0	0	1 (0.45%)
Winnipeg	1181	619,544	225 (90%)	195 (86%)	206 (91%)	165 (86%)	189 (87%)
*RM Cornwallis	1	3,779	0	0	0	0	0
*RM Springfield	1	12,602	0	0	0	0	0
*RM St. Clements	2	9,115	0	0	0	0	0
*RM Victoria Beach	1	265	0	1 (1%)	0	0	0
*RM of Whitehead	1	1,457	0	0	0	0	0
Other	1	0	1 (.5%)	0	0	0	0
Total	**1322**	**720,229**	**100%**	**100%**	**100%**	**100%**	**100%**

*Supplementary police service – RCMP have primary responsibility
**Source: municipal police services
***Source: Statistics Canada, Indian and Northern Affairs, Canada and Dakota Ojibwa Police Service

Table 2: Public Complaints	2003	2002	2001	2000	1999
Files opened	421	372	322	365	415
Formal complaint not received/closed after preliminary investigation	171	145	97	174	197
Formal complaint received	250	227	225	191	218

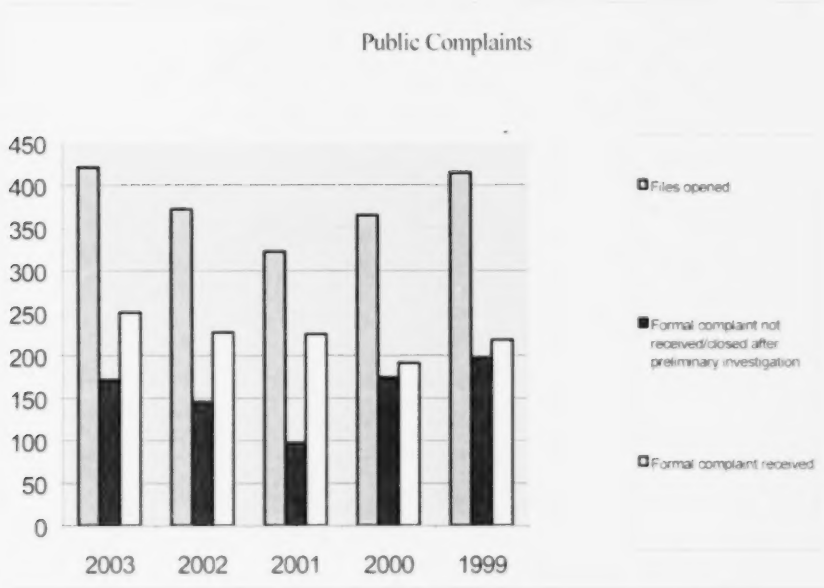

Table 3: Investigations Conducted	2003	2002	2001	2000	1999
Total investigations	447	430	436	356	375
Investigations completed - files closed	205	235	212	141	191
Ongoing investigations carried over as of December 31, 2003	242	195	224	215	184

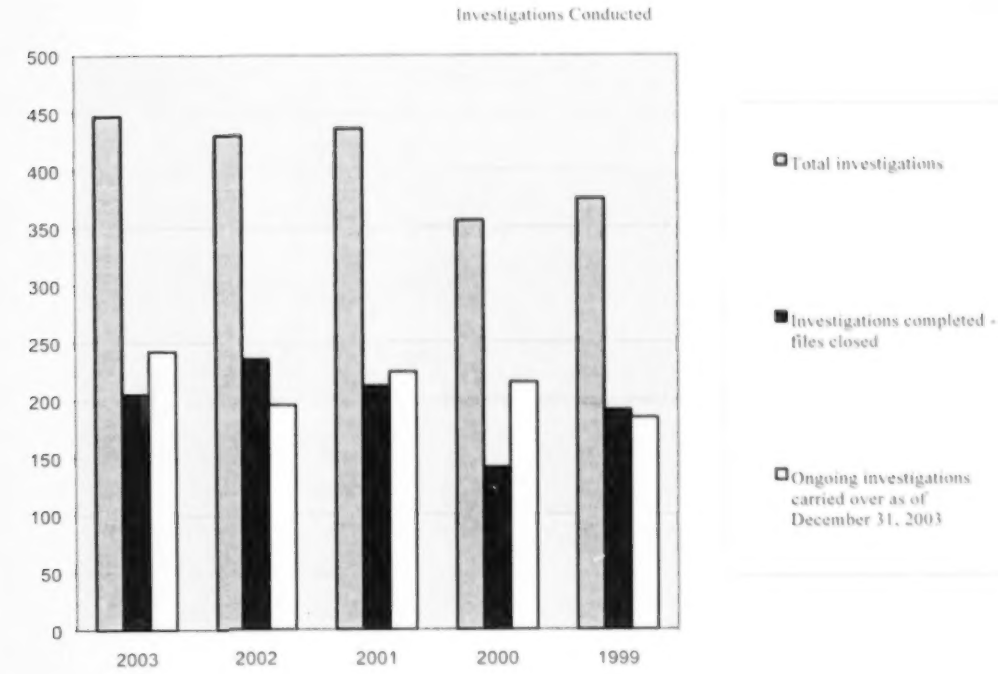

Table 4: Complainant's Allegations: Discipline Code Section 29 *The Law Enforcement Review Act*	**2003**	**2002**	**2001**	**2000**	**1999**
Abuse of authority Sec. 29(a)	167	137	121	60	94
Arrest without reasonable or probable grounds Sec. 29(a)(i)	20	24	25	18	7
Using unnecessary or excessive force Sec. 29(a)(ii)	136	108	111	77	77
Using oppressive or abusive conduct or language Sec. 29(a)(iii)	114	110	101	59	84
Being discourteous or uncivil Sec. 29 (a)(iv)	114	107	82	76	71
Seeking improper personal advantage Sec. 29(a)(v)	1	0	0	0	1
Serving civil documents without proper authorization Sec. 29(a)(vi)	0	0	2	2	0
Discrimination Sec. 29(a)(vii)	12	13	15	12	9
Making false statement(s) Sec. 29(b)	8	9	7	3	7
Improperly disclosing information Sec. 29(c)	6	3	2	4	8
Failing to exercise care or restraint in use of firearm Sec. 29(d)	3	0	2	1	1
Damaging property or failing to report damage Sec. 29(e)	5	9	0	7	3
Failing to provide assistance to person(s) in danger Sec. 29(f)	2	6	2	1	8
Violating person's privacy (under *The Privacy Act)* Sec. 29(g)	0	1	0	1	2
Contravening *The Law Enforcement Review Act* Sec. 29(h)	0	0	0	0	0

Table 5: Incidents Alleging Misuse of Pepper Spray			
2003 (n=4)	**2002 (n=2)**	**2001 (n=3)**	**2000 (n=1)**
2% of 250 complaints investigated Winnipeg=4	1% of 227 complaints investigated Winnipeg =1 *DOPS = 1	1% of 225 complaints investigated Winnipeg = 2 Brandon =1	.5% of 191 complaints investigated Winnipeg =1

*Dakota Ojibway Police Service

Table 6: Incidents Alleging Misuse of Handcuffs			
2003 (n=26)	**2002 (n=9)**	**2001 (n=11)**	**2000 (n=9)**
10% of 250 complaints investigated Winnipeg=25 Brandon=1	4% of 227 complaints investigated Winnipeg = 7 Brandon =1 DOPS = 1	5% of 225 complaints investigated Winnipeg = 8 Brandon =3	5% of 191 complaints investigated Winnipeg =9

Table 7: Incidents Alleging Injuries from Use of Force			
2003 (n=106)	**2002 (n=71)**	**2001 (n=70)**	**2000 (n=50)**
42% of 250 complaints investigated Winnipeg = 101 Brandon = 2 DOPS = 3	31% of 227 complaints investigated Winnipeg =68 Brandon = 1 DOPS =1	31% of 225 complaints investigated Winnipeg = 61 Brandon =9	26% of 191 complaints investigated Winnipeg =47 Brandon = 3

Table 8: **Disposition of Complaints**	**2003** **(n=205)**	**2002** **(n=235)**	**2001** **(n=212)**	**2000** **(n=141)**	**1999** **(n=191)**
Dismissed by commissioner as outside scope of act	26 (13%)	28 (12%)	25 (12%)	11 (8%)	24 (13%)
Dismissed by commissioner as frivolous or vexatious	26 (13%)	32 (14%)	8 (4%)	1 (0.7%)	6 (3%)
Dismissed by commissioner as not supported by sufficient evidence to justify a hearing	64 (31%)	81 (34%)	72 (34%)	42 (30%)	49 (26%)
Abandoned or withdrawn by complainant	80 (39%)	75 (32%)	88 (41%)	65 (47%)	79 (41%)
Resolved informally	6 (3%)	8 (3%)	8 (4%)	19 (12%)	22 (12%)
Public hearing before a provincial court judge	5* (1%)	12 (5%)	11 (5%)	3 (2%)	10 (5%)
Admission of guilt by respondent officer	0	0	0	0	1 (0.5%)

*Two files had been referred for review in 2002. When the reviews were held (in 2003), the judges ordered that they be referred to a public hearing. The commissioner referred three other files to a public hearing in 2003.

Table 9: Legal Involvement of Complainants	2003 (n=250)	2002 (n=227	2001 (n=191)	2000 (n=191)	1999 (n=218)
No charges	91 (36%)	107 (47%)	114 (51%)	68 (36 %)	112 (51%)
Traffic offences	17 (7%)	21 (9%)	12 (5%)	15 (8%)	16 (7%)
Property offences	37 (15%)	14 (6 %)	4 (2%)	15 (8%)	8 (4%)
Intoxicated persons detention	8 (3%)	8 (4%)	12 (5%)	9 (5%)	12 (6%)
Cause disturbance	1 (.4%)	3 (1%)	4 (2%)	3 (2%)	1 (0.45%)
Assault police officer/resist arrest	21 (8%)	17 (8%)	18 (8%)	13 (7%)	6 (3%)
Impaired driving	3 (1%)	3 (1%)	3 (1%)	4 (2%)	6 (3%)
Offences against another person	21 (8%)	12 (5 %)	6 (3%)	14 (7%)	16 (7%)
Domestic disputes	5 (2%)	5 (2 %)	6 (3%)	12 (6%)	11 (5%)
Other	46 (18%)	37 (16 %)	46 (20%)	38 (20%)	30 (14%)

Table 10: Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action	2003	2002	2001	2000	1999
	13	22	13	5	13

Table 11: Referrals of Complaint to Crown for Criminal Investigation	2003	2002	2001	2000	1999
	0	0	0	1	2

Table 12: LERA Complaints Where Complainant Lodged a Criminal Complaint with Police	2003	2002	2001	2000	1999
	11	19	25	22	11

Table 13: Time Span of Ongoing Investigations Carried Over as of December 31, 2003

YEAR	1-3 Months	4-7 Months	8-12 Months	13-18 Months	19-23 Months	24+ Months	Total
1999	0	0	0	0	0	1	1
2000	0	0	0	0	0	3	3
2001	0	0	0	0	1	10	11
2002	0	0	7	30	15	0	52
2003	84	55	36	0	0	0	175
Total	**84**	**55**	**43**	**30**	**16**	**14**	**242**

Table 14: Files Concluded in 2003 by Year of Origin

Year	Number of Files	Average Time to Close Investigation
1999	1	46 months
2000	6	29 months
2001	27	21 months
2002	96	8 months
2003	75	4 months
Total	205	9 months

Table 15: Length of Time to Complete Investigations	2003 (n=205)	2002 (n=235)	2001 (n=212)	2000 (n=141)	1999 (n=191)
1-3 Months	44	46	40	12	19
4-7 Months	63	51	45	44	71
8-12 Months	46	58	38	48	54
13-18 Months	28	29	51	27	25
19-23 Months	11	23	25	5	7
24+ Months	13	28	13	5	15
Average	9 Months	12 Months	13 Months	11 Months	10 Months

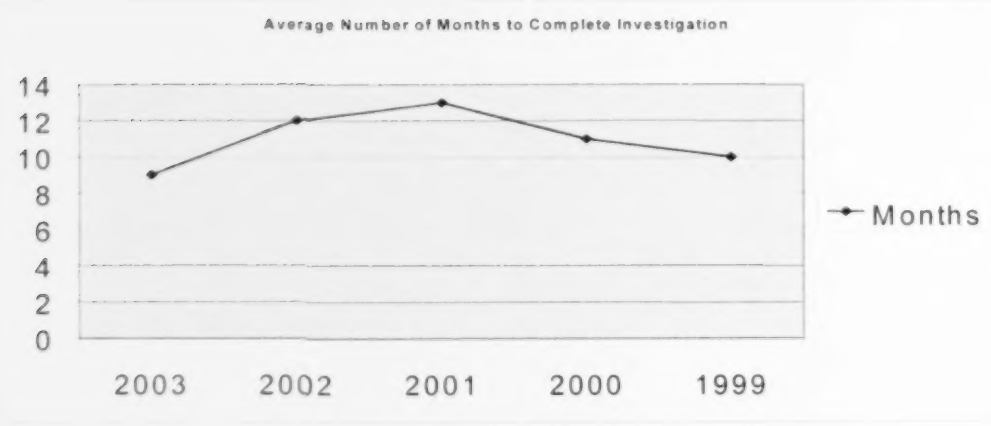

Table 16: Location of Incident	2003 (n=250)	2002 (n=227)	2001 (n=225)	2000 (n=191)	1999 (n=218)
Street	83	79	79	58	74
Private residence	75	67	64	59	67
Public building/place	23	18	25	19	24
Police station	49	35	36	30	28
Other	20	28	21	25	25

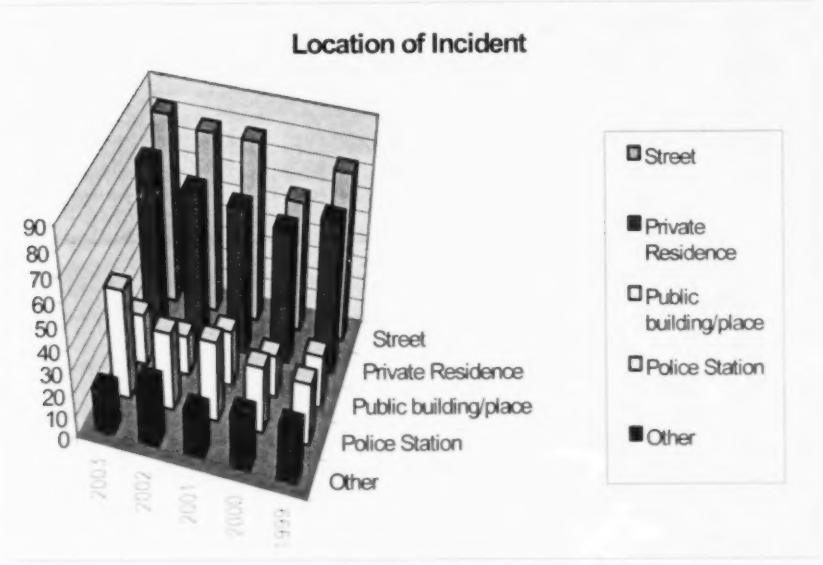

Table 17: Complainant Demographics	2003 (n=250)	2002 (n=227)	2001 (n=225)	2000 (n=191)	1999 (n=218)
Sex					
Male	172 (69%)	152 (67%)	155 (69%)	133 (70%)	143 (66%)
Female	78 (31%)	75 (33%)	70 (31%)	58 (30%)	75 (34%)
Age					
Over 50	33 (13%)	23 (10%)	24 (11%)	25 (13%)	24 (11%)
40 - 49	32 (13%)	40 (18%)	44 (20%)	53 (28%)	42 (19%)
30 - 39	45 (18%)	53 (23%)	45 (20%)	38 (20%)	55 (25%)
18 – 29	55 (22%)	64 (28%)	69 30%)	55 (29%)	52 (24%)
Youth under 18	55 (22%)	55 (22%)	12 (5%)	8 (4%)	13 (6%)
Birth dates unknown	41 (16%)	33 (15%)	31 (14%)	12 (6%)	32 (15%)